

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

OCT 31 2007

COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,

Appellee,

v.

ANGELA ANTONIA CASTILLO,

Appellant.

2 CA-CR 2006-0391
DEPARTMENT B

MEMORANDUM DECISION

Not for Publication
Rule 111, Rules of
the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20054859

Honorable Stephen C. Villarreal, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General
By Randall M. Howe and Jessica L. Quickle

Phoenix
Attorneys for Appellee

David Alan Darby

Tucson
Attorney for Appellant

E S P I N O S A, Judge.

¶1 After a jury trial held in her absence, appellant Angela Antonia Castillo was convicted of theft of a means of transportation by control and/or by controlling stolen property, third-degree burglary, and possession of burglary tools. The trial court suspended the imposition of sentence and placed Castillo on probation for three years. Castillo

contends on appeal that the trial court erred when it denied the motion for judgment of acquittal she made at the close of the state's case. For the reasons stated below, we affirm.

¶2 A motion for judgment of acquittal is only appropriate when there is a complete absence of substantial evidence to support a conviction. Ariz. R. Crim. P. 20(a). Substantial evidence is “proof that reasonable persons could find ‘sufficient to support a conclusion of a defendant’s guilt beyond a reasonable doubt.’” *State v. Johnson*, 215 Ariz. 28, ¶ 2, 156 P.3d 445, 446 (App. 2007), *quoting State v. Spears*, 184 Ariz. 277, 290, 908 P.2d 1062, 1075 (1996). We review the trial court’s denial of Castillo’s Rule 20 motion for an abuse of discretion. *See State v. Paris-Sheldon*, 214 Ariz. 500, ¶ 32, 154 P.3d 1046, 1056 (App. 2007). We will affirm the trial court’s ruling unless there is no evidence in the record that would support the finding that Castillo had committed the charged offenses. *See State v. Mauro*, 159 Ariz. 186, 206, 766 P.2d 59, 79 (1988).

¶3 After the state rested, Castillo moved for a judgment of acquittal pursuant to Rule 20. It was unclear whether the motion was intended to relate to all three charges. However, defense counsel stated, “the State has not provided adequate substantial evidence to indicate that Angela Castillo knew, should have known, or had any knowledge that the vehicle was a stolen vehicle.” Based on the elements of the offense of theft by control, *see* A.R.S. § 13-1814, the motion thus appears to have been directed at that charge. But during a discussion about jury instructions, counsel then maintained there was no evidence Castillo had actually stolen the truck, suggesting a challenge to the sufficiency of the evidence supporting burglary and possession of burglary tools as well. Castillo’s argument on appeal is similarly vague. Without referring to the specific offenses and explaining why the

evidence was lacking as to the statutory elements of each, Castillo asserts summarily that the evidence “was insufficient to convince a reasonable person Appellant was guilty beyond a reasonable doubt.” She adds that, by denying the motion, “the trial court permitted the jury to speculate as to guilt of Appellant.” Even if we construe the Rule 20 motion as having been directed to all three charges and similarly construe Castillo’s argument on appeal, the trial court did not abuse its discretion.

¶4 Among Castillo’s points are that she made no admissions; she did not flee when the officer stopped her as she drove the stolen truck; even though the truck’s steering column and door had been broken, the damage was not obvious to an untrained eye; and there were no fingerprints or other physical evidence directly establishing her culpability. But on appeal, we are required to view the evidence in the light most favorable to sustaining the trial court’s ruling. *See State v. Neal*, 143 Ariz. 93, 98, 692 P.2d 272, 277 (1984). So viewed, the evidence was substantial that Castillo had controlled the truck and had either known or should have known it was stolen, § 13-1814; that she had entered into or remained in the truck unlawfully with the intent to commit a theft or a felony therein, A.R.S. § 13-1506; and that she had possessed a “jiggle key,” a special key used by car thieves to turn on the ignition in a vehicle and thus an item that falls within the definition of a burglary tool, A.R.S. § 13-1505.

¶5 The state presented evidence establishing the following. The victim’s truck was stolen while he was at work. The truck, which was not damaged before it was stolen, was returned to him with over \$2,000 worth of damage, particularly on the driver’s side door and the steering column. A few days after the theft, Pima County Sheriff’s Deputy Kenneth

Atwell stopped the truck, which Castillo was driving. Inside the truck, Atwell found documents establishing the victim owned it. Atwell testified about the damage he observed to the driver's side door, below the handle, and to the truck's steering column and ignition.

¶6 Based on Atwell's testimony as well as that of a police detective, the kind of damage Atwell observed is consistent with someone's having entered the truck by force, probably by using a tool such as a flathead screwdriver, and having started the truck without the appropriate key. Atwell found a key in the truck, which he explained was not the manufacturer's key but one specifically used to steal a vehicle. As Atwell explained, characteristic of such a key, is that it could be removed from the ignition while the engine was running, and the engine would continue to run. The detective testified about such keys and how they work, referring to the key as a manipulation or "jiggle" key. The key Atwell found was on a key chain that also had the letter "C."

¶7 This evidence was sufficient to withstand Castillo's Rule 20 motion. As the state correctly points out, the fact that much of the evidence was circumstantial does not render it insufficient. Circumstantial evidence is competent evidence. *See State v. Rhymes*, 107 Ariz. 12, 15, 480 P.2d 662, 665 (1971) ("Since time immemorial circumstantial evidence has been held competent in criminal cases and convictions based solely thereon have been sustained in our courts."). Such evidence in combination with the direct evidence presented, including the fact that Castillo had been driving a stolen vehicle, permitted the jury to infer that Castillo had actually either broken into the truck intending to steal it or had entered it and remained in it knowing it was stolen; that she did, in fact, steal the truck and drive it; and that she had possessed a manipulation or "jiggle key," designed to facilitate the

theft of a vehicle. Inferring facts from probative evidence is not synonymous with speculation, as Castillo suggests. *Cf. Preuss v. Sambo's of Ariz., Inc.*, 130 Ariz. 288, 290, 635 P.2d 1210, 1212 (1981) (trial court erred when it denied motion for directed verdict because evidence did not support jury's speculative finding that defendant had known or should have known of alleged defect); *Matts v. City of Phoenix*, 137 Ariz. 116, 119, 669 P.2d 94, 97 (App. 1983) (finding that party had actual or constructive knowledge must be based on more than "sheer speculation" and jury may not "draw speculative inferences which [are] not based on probative facts"); *see also Anderson v. Nissei ASB Mach. Co., Ltd.*, 197 Ariz. 168, 175, 3 P.3d 1088, 1095 (App. 1999) (rejecting dissent's insistence that jury's finding was based on speculation and concluding "jury's findings are reasonable inferences"). The state here had presented sufficient evidence that reasonably would support findings of guilt on all three charged offenses, without requiring the jury to speculate about Castillo's culpability.

¶8 The convictions are affirmed, as are the probationary terms imposed.

PHILIP G. ESPINOSA, Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

GARYE L. VÁSQUEZ, Judge

